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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JORDAN ROSENBERG,

Plaintiff and Appellant,

v.

CORNELL CORRECTIONS OF
CALIFORNIA, INC. et al.,

Defendants and Respondents.

A135390

(San Francisco City & County
Super. Ct. No. CGC-10-496236)

I.

INTRODUCTION

Appellant Jordan Rosenberg, acting in propria persona, filed this lawsuit claiming he experienced numerous violations of his rights while he was a resident in a custodial prerelease facility called the Taylor Street Center in San Francisco (the Taylor Street facility). He appeals from a summary judgment granted in favor of respondents, the employees and corporate officers of the Taylor Street facility. Appellant claims this court should “revoke the orders granting the defendants[’] motions for summary judgment and . . . allow the case to go to trial.” However, appellant fails to support this assertion with any discernible legal argument or cogent discussion of the evidence presented on summary judgment. Consequently, we affirm.

II.

APPELLATE PROCEDURE

Our attempts to summarize what this case is about and respond to the arguments made by appellant are severely impeded by the multiple deficiencies in appellant's brief. According to California Rules of Court, rule 8.204(1)(A)¹, an appellate brief must "[b]egin with a table of contents and a table of authorities." Rule 8.204(a)(2)(A) states that a brief must also state "the nature of the action." Rule 8.204(a)(2)(C) requires the opening brief to provide "a summary of the significant facts limited to matters in the record." Moreover, rule 8.204(a)(1)(C) requires "[a]ny reference to a matter in the record" to be supported "by a citation to the volume and page number of the record where the matter appears."

Furthermore, to demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) "Arguments should be tailored according to the applicable standard of appellate review." (*Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1388.) These requirements apply equally to appellate lawyers and others, such as appellant, who are acting as their own counsel. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 523.) Appellant's opening brief fails to meet any of these mandatory requirements. Consequently, we have discretion to deem the issues waived. (*Id.* at p. 522.) Nevertheless, with due regard for the time and effort it has taken respondents to prepare a thorough response to this appeal, which has greatly assisted this court in deciphering appellant's arguments, we exercise our discretion to address this appeal on its merits.

III.

FACTS AND PROCEDURAL HISTORY

In December 2004, appellant was convicted of multiple felony offenses and was sentenced to imprisonment in the custody of the Federal Bureau of Prisons (BOP) for a

¹ All rule references are to the California Rules of Court.

term of 36 months. After serving part of his incarceration at a federal penitentiary in Lompoc, California, appellant was transferred by the BOP to the Taylor Street facility, where he served the remaining three months of his sentence from approximately October 24, 2006, until his release from custody on January 26, 2007. During this time period, the Taylor Street facility was owned and operated by respondent Cornell Companies, Inc. pursuant to a contract with the BOP.

On January 19, 2007, prior to his release from custody, appellant filed a lawsuit in San Francisco County Superior Court (*Rosenberg v. Cornell Corporation, Inc.*, No. CGC-07-459757), alleging federal civil rights claims against multiple defendants arising from events during his stay at the Taylor Street facility. On or about September 12, 2007, appellant's prior lawsuit was removed to the United States District Court for the Northern District of California. The federal court issued an order on December 17, 2009, followed by entry of judgment on December 18, 2009, dismissing appellant's federal claims, and additionally dismissing three claimed violations of California state law, including causes of action for fraud and unfair and fraudulent business practices, without prejudice to appellant re-filing those claims in state court.

On January 25, 2010, appellant initiated the present lawsuit with the filing of a complaint asserting state law claims in relation to his residency at the Taylor Street facility. On April 23, 2010, he filed a first amended complaint (FAC) against respondent Cornell Companies, Inc. and 19 additional named defendants. By appellant's own description, he "has alleged a variety of claims including due process violation, rights violations under the State constitution, arbitrary punishment, contract violations, fraud, intentional and negligent infliction of emotional distress, premises liability, breach of contract, violation of [Business and Professions Code] sec[tion] 17200, and violation of the Consumer Legal Remedies Act." The FAC is the operative complaint in this summary judgment proceeding.

Respondents filed an answer to the FAC on June 14, 2010. In May 2011, two groups of respondents filed separate motions for summary judgment. The first summary judgment motion was filed by 12 corporate officers and directors, and the second

summary judgment motion was filed by the remaining respondents. On June 30, 2011, appellant filed a document entitled “Motion for Judgment on Pleadings; Motion to Deny Summary Judgment Motion.” On September 30, 2011, the trial court filed an order denying appellant’s motions.²

On December 13, 2011, the trial court granted respondents’ motions for summary judgment after finding, among other things, “that there are no triable issues of material fact and that [respondents] are entitled to judgment as a matter of law” A judgment was entered for respondents on March 15, 2012. This appeal followed.

IV.

DISCUSSION

“ ‘The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties’ pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. . . .’ [Citation.]” (*Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 72.) A motion for summary judgment should be granted if the submitted papers show there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. A defendant meets the burden of showing a cause of action has no merit if he or she shows that one or more elements of the cause of action cannot be established or that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue of material fact exists. (See generally *Claudio v. Regents of University of California* (2005) 134 Cal.App.4th

² Appellant’s motion for judgment on the pleadings argued that respondents’ failure to file a verified answer to appellant’s verified FAC should result in judgment being entered for appellant without the court having to reach the merits of respondents’ motions for summary judgment. Appellant claims the “ruling denying [appellant’s] motion for judgment on the pleadings was in error.” Appellant’s brief improperly attempts to incorporate by reference documents from the trial court proceeding and “will not be repeated here.” “An appellant cannot rely on incorporation of trial court papers, but must tender arguments *in the appellate briefs*. [Citation.]” (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 109, original italics.)

224, 229.) We review the trial court’s grant of summary judgment de novo. (*State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017-1018.)

In assessing the propriety of summary judgment, we look first to the allegations in appellant’s FAC, which frame the issues pertinent to a motion for summary judgment. (*Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1662.) While not a model of clarity, appellant’s FAC basically challenged the legality of numerous conditions and practices at the Taylor Street facility during his residency.

Appellant alleges his access to the law library was “sometimes completely refused, sometimes severely limited” by Taylor Street facility staff. He claims these “actions deprived [him] of access to the courts, a basic civil right.”

Appellant next alleges the Taylor Street facility “staff required that [he] line up along side [a] burning building. This is an unsafe practice that put [his] life at risk without reason.” He claims he was punished “for actions to protect his life when [respondents] have put his life needlessly at risk” He states “[a]rbitrary and unlimited punishment by [respondents] is cruel and unusual punishment and violates due process.”

He also claims the Taylor Street facility staff “confiscated [his] medicines (sudaphed and afrin [*sic*]).” Appellant allegedly “experienced pain and discomfort while without his medicines.”

Furthermore, “[he] was housed in a room with bedbugs. When [he] attempted to use bug spray to kill the bedbugs, [respondents] confiscated the bug spray.” His FAC claims “[b]eing forced to live with bedbugs constitutes cruel and unusual punishment.”

Next, appellant alleges Taylor Street facility staff prevented him from meeting the program’s employment requirements. The staff purportedly “hindered [him] in his employment search,” although he did admit that he found “two part time jobs.”

Furthermore, appellant claims he was denied the right “to purchase basic necessities” for personal hygiene not supplied by the Taylor Street facility.

In his prayer for relief, appellant sought declaratory relief, injunctive relief and “[c]ombined monetary relief not less than \$10,000,000.00.”

In response to the allegations made in the FAC, respondents proffered evidence on summary judgment designed to show that appellant could not prevail on any theory raised in the FAC. (*Saville v. Sierra College* (2005) 133 Cal.App.4th 857, 865.)

As for appellant's claim that his ability to leave the facility was severely restricted, respondents presented "true and correct copies of the Control Sheets from [appellant's] file reflecting the dates and times when he signed in and out of the building for various purposes." These documents reflect that appellant was permitted to leave the facility on six different occasions in order to use the library.

As noted, appellant's FAC complains that staff confiscated over-the-counter medication and ant and roach spray that appellant had purchased and brought back to the facility at some unspecified time without permission. Respondents presented evidence that these items are considered contraband and clearly forbidden under the "Prohibited Items Checklist" that appellant acknowledged and agreed to abide by upon his admission to Taylor Street facility. Respondents claim that the evidence established appellant was properly cited for this infraction of facility rules.

As for the Taylor Street facility's problem with bed bugs, respondents presented evidence that the facility contracted with a pest control company named Pestec to exterminate and control the bed bug problem. Records from Pestec's monthly inspections were submitted. Respondents claimed "[d]espite the fact that we were using the extermination services of Pestec, [appellant] purchased over-the-counter ant and roach spray on his own and brought it into the facility without permission."

Respondents also produced evidence that appellant was subject to discipline for leaving the premises without authorization during a fire drill conducted on or about November 20, 2006, and then refusing to comply with staff orders when instructed to return to the designated evacuation site next to the facility. Respondents explained that monthly fire drills were conducted during all relevant times to this lawsuit. The procedure for a fire drill is to have residents evacuate the building and line up along the

side of the building around the corner and adjacent to the street.³ Appellant left the premises during a fire drill and failed to obey a staff order to return, which was a violation of the rule against disobeying staff orders.

Respondents claimed there was no factual basis for appellant's allegation that his failure to secure and maintain employment while at the Taylor Street facility was the direct result of staff impairing his job search. While respondents indicated that "[o]ur goal is get the residents employed;" nevertheless, "we do not represent, warrant or otherwise guarantee that full time employment will [be] offered to them by third parties." Respondents pointed out that appellant never presented any type of evidence or facts to support his assertion that facility staff intentionally thwarted his job search.

Moreover, appellant's separate allegation that he was deprived of "basic necessities" while residing at Taylor Street facility was similarly unfounded. Respondents presented evidence that appellant was provided with a "Hygiene Pass" on three different occasions which allowed him to leave the building for the purpose of acquiring personal hygiene items. Furthermore, all non-working residents were provided with essential hygiene products, free of cost, including combs, soap, toothpaste, shampoo and deodorant.

Once the trial court found the facts adduced by respondents negated appellant's claims, the burden shifted to appellant to proffer evidence raising a triable issue of fact. (See *Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 940.) When the matter was argued, the court explained to appellant "[w]hat controls in motions for summary judgment . . . is what you set forth in the opposing statement, you know, separate statement of facts, undisputed facts. That's what controls." In going through appellant's responses to respondents' proffered facts, the court "did not find competent evidence to contravene what the other side raised." In granting summary judgment for respondents, the court

³ Respondents indicated that appellant's statement in the FAC that he was forced to "lin[e] up along [a] burning building" was, at best "tremendously exaggerated." Respondents explained that there was a small fire that was quickly put out by a staff member prior to San Francisco Fire Department's arrival in response to the fire alarm.

found that in “looking at the separate statements, the opposing party failed to provide competent opposing evidence. . . .” In conducting our de novo review of this ruling, we agree.

“An issue of fact is not created by speculation, conjecture, imagination, or guesswork; it can be created only by a conflict in the evidence submitted to the trial court in support of and in opposition to the motion. [Citation.]” (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116 (*Lewis*).) Moreover, “de novo review does not obligate us to cull the record for the benefit of the appellant in order to attempt to uncover the requisite triable issues. As with an appeal from any judgment, it is the appellant’s responsibility to affirmatively demonstrate error and, therefore, to point out the triable issues the appellant claims are present by citation to the record and any supporting authority.” (*Claudio v. Regents of University of California* (2005) 134 Cal.App.4th 224, 230; see also *Lewis, supra*, at p. 116 [“[w]hen a fact upon which plaintiff relies is not mentioned in the separate statement, it is irrelevant that such fact might be buried in the mound of paperwork filed with the trial court”].) “Without a separate statement of undisputed facts, with references to supporting evidence in the form of affidavits or declarations, it is impossible for the plaintiff to demonstrate the existence of disputed facts. [Citation.]” (*Lewis, supra*, at p. 116; accord, *California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 22.)

In this case, appellant failed to cite to opposing evidence, containing evidentiary facts, to contradict or disprove respondents’ evidence. In opposing respondents’ motion for summary judgment, appellant sought to raise triable issues of material fact simply by restating the allegations made in his complaint. Consequently, appellant’s inadequate showing in response to respondents’ undisputed material facts, *standing alone*, constitutes sufficient grounds for granting the motion for summary judgment. (Code Civ. Proc., § 437c, subd. (b); *Kaplan v. LaBarbera* (1997) 58 Cal.App.4th 175, 179.)

In appellant’s brief, instead of setting out the existence of triable issues of material fact precluding summary judgment, appellant asserted that he should have been allowed additional discovery, even though he had already received extensive discovery from

respondents. In seeking additional discovery, the party opposing the motion for summary judgment must show: “ ‘(1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. . . .’ [Citation.]” (*Frazee v. Seely* (2002) 95 Cal.App.4th 627, 633.) On appeal, appellant fails to make the requisite showing. He does not attempt to explain how further discovery would yield any evidence that would provide factual support for his claims. (See Code. Civ. Proc., § 437c, subd. (h).)

Accordingly, we affirm the summary judgment granted in favor of respondents based solely on appellant’s failure to file an adequately supported separate statement of disputed facts in the trial court. (Code Civ. Proc., § 437c, subd. (b)(3).) Since we affirm on this basis alone, we do not consider the other grounds cited by the trial court or discussed by respondents supporting the grant of summary judgment.

V.

DISPOSITION

The judgment is affirmed. Costs on appeal to respondents.

RUVOLO, P. J.

We concur:

RIVERA, J.

HUMES, J.